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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,519	07/16/2003	Dagan Gideon	L8370-01004	9019

7590 09/28/2004

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EXAMINER

TRAN, KHOA H

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 09/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/620,519

Applicant(s)

GIDEON, DAGAN

Examiner

Khoa Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/16/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Drawings

The drawings are objected to because several reference numerals lead lines are crossing one another. See Figures 4 and 5. It is suggested that some of these unnecessary references numerals and their lead lines should be deleted in order to further clarify the drawing. Correction is required.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The specification is objected to because of the following typographic errors: On page 6, line 14, "respe ct" should be --respect--; on page 8, line 33, "interi or" should be --interior--; and on page 9, line 6, "ribs 72" should be--ribs 65--. Appropriate correction is required.

The information disclosure statement filed July 16, 2003 was not considered because applicant fails to provide copies of other publication documents with the inclusion of publication date and pertinent pages, etc.

Claim Objections

Claims 1 and 3 are objected to because of the following informalities: With respect to claim 1, line 1, "comprising" should be --comprising-- and line 5, "recessio n" should be --recession--; and claim 3, line 3, "o" should be --of-- . Appropriate correction is required.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-12 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-12 of copending Application No. 10/746,510. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Wright (U. S. Patent 5,038,942). Wright discloses a modular rack comprising:

a plurality of rack elements, each rack element comprising a housing that has a plurality of container accommodating openings/recesses formed between a forward wall and a rear wall; the rack element further includes a sidewall with an outer surface that has at least one protrusion portion defines a head portion and a neck portion thereof, and wherein the protrusion portion of the rack element is slidable engaged with a recession portion formed on another rack element. See Figure 2.

Claims 1-9, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Lin (U. S. Patent 5,947,305). Lin discloses a modular rack comprising:

a plurality of rack elements (4), each rack element comprising a housing that has a plurality of container accommodating openings/recesses (21) formed between a forward wall and a rear wall (note the forward wall is connected to the rear wall by support rod 3); the rack element further includes an interior wall on an opposite side of an outer sidewall (2) that has at least one protrusion portion (22) defining a head portion and a neck portion thereof, and wherein the protrusion portion of the rack element is slidable engaged with a recession portion (23) formed on another rack element. See Figure 4.

Claims 1-9, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Gladstone et al. (U. S. Patent 6,209,735). Gladstone et al. disclose a modular rack comprising:

a plurality of rack elements (10), each rack element comprising a housing that has a plurality of container accommodating openings/recesses (21) formed between a forward wall and a rear wall; the rack element further includes an interior wall (14) and an outer sidewall (2) that has at least one protrusion portion (24) defining a head portion and a neck portion thereof, and wherein the protrusion portion of the rack element is slidable engaged with a recession portion (18) formed on another rack element, see Figures 1-6.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 7, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin (U. S. Patent 5,947,305) as applied to claims 1-9, 11, and 12 above, and further in view of Weterrings et al. (U.S. Patent No. 5,655,673). Weterrings et al. teach a plurality of ribs (30) extending circumferentially around the surface of an interior wall. See Figure 1. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the interior wall of Lin with the provision of ribs as taught by Weterrings et al. in order to hold the stored item in place.

Claims 6, 7, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gladstone et al. (U. S. Patent 6,209,735) as applied to claims 1-9, 11, and 12 above, and further in view of Barber (U.S. Patent No. 3,918,920). Barber teaches a

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plurality of ribs (16, 17, 25,) extending circumferentially around the surface of an interior wall. See Figures 2-5. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the interior wall of Gladstone et al. with the provision of ribs as taught by Barber. in order to enable to accommodate various size of bottles to be stored in the rack.

The prior art made of record and not relied upon is considered pertinent to applicants' disclosure. Gonzalez, Wachter, Harris, Jr., Wagschal, Rubin et al., and Avery et al. are cited to show a modular rack that has similar configurations of design to applicant's invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 9:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun, can be reached on (703) 308-2156. The fax phone number for this Group before a final Office action is (703) 872-9306 and after a final Office action is (703) 872-9327.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Khoa Tran

September 20, 2004



LESLIE A. BRAUN
SUPERVISORY PATENT EXAMINER